

ANTONIA MARANAN PLAINTIFF-APPELLANT, VS. PASCUAL PEREZ, ET AL., DEFENDANTS, PASCUAL PEREZ, DEFENDANT-APPELLANT.

G.R. No. L-22272. June 26, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

Rogelio Corachea, on October 18, 1960, was a passenger in a taxicab owned and operated by Pascual Perez when he was stabbed and killed by the driver, Simeon Valenzuela.

Valenzuela was prosecuted for homicide in the Court of First Instance of Batangas. Found guilty, he was sentenced to suffer imprisonment and to indemnify the heirs of the deceased in the sum of P6,000. Appeal from said conviction was taken to the Court of Appeals.

On December 6, 1961, while appeal was pending in the Court of Appeals, Antonia Maranan, Rogelio's mother, filed an action in the Court of First Instance of Batangas to recover damages from Perez and Valenzuela for the death of her son. Defendants asserted that the deceased was killed in self-defense, since he first assaulted the driver by stabbing him from behind. Defendant Perez further claimed that the death was a *caso fortuito* for which the carrier was not liable.

The court *a quo*, after trial, found for the plaintiff and awarded her P3,000 as damages against defendant Perez. The claim against defendant Valenzuela was dismissed. From this ruling, both plaintiff and defendant Perez appealed to this Court, the former asking for more damages and the latter insisting on non-liability. Subsequently, the Court of Appeals affirmed the judgment of conviction earlier mentioned, during the pendency of the herein appeal, and on May 19, 1964, final judgment was entered therein. (Rollo, p. 33)

Defendant-appellant relies solely on the ruling enunciated in *Gillaco v. Manila Railroad Co.*, 97 Phil. 884, that the carrier is under no absolute liability for assaults of its employees upon the passengers. The attendant facts and controlling law of that case and the one at bar are very different however. In the *Gillaco* case, the passenger was killed outside the scope and the course of duty of the guilty employee. As this Court there found:

"x x x when the crime took place, the guard Devesa had no duties to discharge in connection with the transportation of the deceased from Calamba to Manila. The stipulation of facts is clear that when Devesa shot and killed Gillaco, Devesa was assigned to guard the Manila-San Fernando (La Union) trains, and he was at Paco Station awaiting transportation to Tutuban, the starting point of the train that he was engaged to guard. In fact, his tour of duty was to start at 9:00 a.m., two hours after the commission of the crime. Devesa was therefore under no obligation to safeguard the passengers of the Calamba-Manila train, where the deceased was riding; and the killing of Gillaco was not done in line of duty. The position of Devesa at the time was that of another would be passenger, a stranger also awaiting transportation, and not that of an employee assigned to discharge any of the duties that the Railroad had assumed by its contract with the deceased. As a result, Devesa's assault can not be deemed in law a breach of Gillaco's contract of transportation by a servant or employee of the carrier. x x x" (Emphasis supplied)

Now here, the killing was perpetrated by the driver of the very cab transporting the passenger, in whose hands the carrier had entrusted the duty of executing the contract of carriage. In other words, unlike the Gillaco case, the killing of the passenger here took place in the course of duty of the guilty employee and when the employee was acting within the scope of his duties.

Moreover, the Gillaco case was decided under the provisions of the Civil Code of 1889 which, unlike the present Civil Code, did not impose upon common carriers absolute liability for the safety of passengers against willful assaults or negligent acts committed by their employees. The death of the passenger in the Gillaco case was truly a fortuitous event which exempted the carrier from liability. It is true that Art. 1105 of the old Civil Code on fortuitous events has been substantially re-produced in Art. 1174 of the Civil Code of the Philippines but both articles clearly remove from their exempting effect the case where the law expressly provides for liability in spite of the occurrence of force majeure. And herein significantly lies the statutory difference between the old and present Civil Codes, in the backdrop of the factual situation before Us, which further accounts for a different result in the Gillaco case. Unlike the old Civil Code, the new Civil Code of the Philippines expressly makes the common carrier liable for intentional assaults committed by its employees upon its passengers, by the wording of Art. 1759 which categorically states that

"Common carriers are liable for the death of or injuries to passengers through the negligence or wilful acts of the former's employees, although such employees may have acted beyond the scope of their authority or in violation of the orders of the common carriers."

The Civil Code provisions on the subject of Common Carriers[1] are new and were taken from Anglo-American Law.[2] There, the basis of the carrier's liability for assaults on passengers committed by its drivers rests either on (1) the doctrine of respondent superior or (2) the principle that it is the carrier's implied duty to transport the passenger safely.[3]

Under the first, which is the minority view, the carrier is liable only when the act of the employee is within the scope of his authority and duty. It is not sufficient that the act be within the course of employment only.[4]

Under the second view, upheld by the majority and also by the later cases, it is enough that the assault happens within the course of the employee's duty. It is no defense for the carrier that the act was done in excess of authority or in disobedience of the carrier's orders.[5] The carrier's liability here is absolute in the sense that it practically secures the passengers from assaults committed by its own employees.[6]

As can be gleaned from Art. 1759, the Civil Code of the Philippines evidently follows the rule based on the second view. At least three very cogent reasons underlie this rule. As explained in *Texas Midland R.R. v. Monroe*, 110 Tex. 97, 216 S.W. 388, 389-390, and *Haver v. Central Railroad Co.*, 43 LRA 84, 85: (1) the special undertaking of the carrier requires that it furnish its passenger that full measure of protection afforded by the exercise of the high degree of care prescribed by the law, inter alia from violence and insults at the hands of strangers and other passengers, but above all, from the acts of the carrier's own servants charged with the passenger's safety; (2) said liability of the carrier for the servant's violation of duty to passengers, is the result of the former's confiding in the servant's hands the performance of his contract to safely transport the passenger, delegating therewith the duty of protecting the passenger with the utmost care prescribed by law; and (3) as between the carrier and the passenger, the former must bear the risk of wrongful acts or negligence of the carrier's employees against passengers, since it, and not the passengers, has power to select and remove them.

Accordingly, it is the carrier's strict obligation to select its drivers and similar employees with due regard not only to their technical competence and physical ability, but also, no less important, to their total personality, including their patterns of behavior, moral fibers, and social attitude.

Applying this stringent norm to the facts in this case, therefore, the lower court rightly adjudged the defendant carrier liable pursuant to Art. 1759 of the Civil Code. The dismissal of the claim against the defendant driver was also correct. Plaintiff's action was predicated on breach of contract of carriage^[7] and the cab driver was not a party thereto. His civil liability is covered in the criminal case wherein he was convicted by final judgment.

In connection with the award of damages, the court a quo granted only P3,000 to plaintiff-appellant. This is the minimum compensatory damages amount recoverable under Art. 1764 in connection with Art. 2206 of the Civil Code when a breach of contract results in the passenger's death. As has been the policy followed by this Court, this minimal award should be increased to P6,000. As to other alleged actual damages, the lower court's finding that plaintiff's evidence thereon was not convincing,^[8] should not be disturbed. Still, Arts. 2206 and 1764 award moral damages in addition to compensatory damages, to the parents of the passenger killed to compensate for the mental anguish they suffered. A claim therefor having been properly made, it becomes the court's duty to award moral damages.^[9] Plaintiff demands P5,000 as moral damages; however, in the circumstances, We consider P3,000 moral damages, in addition to the P6,000 damages afore-stated, as sufficient. Interest upon such damages are also due to plaintiff-appellant.^[10]

WHEREFORE, with the modification increasing the award of actual damages in plaintiff's favor to P6,000, plus P3,000 moral damages, with legal interest on both from the filing of the complaint on December 6, 1961 until the whole amount is paid, the judgment appealed from is affirmed in all other respects. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, and Ruiz Castro, JJ., concur.

[1] Section 4, Chapter 3, Title VIII, Republic Act 386.

[2] Report of the Code Commission, p. 64.

[3] For an extensive discussion, see 53 ALR 2d 721-728; 732-734.

[4] Williams vs. Shreveport Yellow Cab Co., 183 So. 120; Southeastern Greyhound Lines vs. Smith, 23 Tenn. App. 627, 136 SW 2d 272.

[5] Am. Jur. 105-107; 263-265.

[6] Dixie Motor Coach Corp. vs. Toler, 1997 Ark. 1097, 126 SW 2d 618; Van Hoeffen vs. Columbia Taxicab Co., 179 Mo. App. 591, 162 S.W. 694; Brockway vs. Mordenti, 199 Misc. 898, 103 NYS 2d 621; Korner vs. Cosgrove, 141 NE 265, 31 ALR 1193.

[7] Plaintiff-Appellant's brief, p. 7.

[8] Record on Appeal, p. 35.

[9] Mercado v. Lira, L-13328-29 & L-13358, Sept. 29, 1961.

[10] Art. 2210, Civil Code.

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